IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PERFECT BROW ART FRANCHISE, INC.,	)	
	)	Civil Action No.
Plaintiff,	)	
	)	Judge:
v.	)	
	)	Magistrate Judge:
MARIUS BLAKE and JUST THREADING,	)	
	)	
Defendants.	)	

COMPLAINT

Plaintiff, Perfect Brow Art Franchise, Inc., by and through its attorneys, alleges against defendant Marius Blake and defendant Just Threading (collectively "Defendants") as follows:

NATURE OF THE ACTION

1. This action seeks declaratory relief, compensatory damages, punitive damages, and attorney's fees and costs for breach of contract and relevant claims arising from a business relationship between Perfect Brow Art Franchise, Inc. and Marius Blake.

2. This action further seeks preliminary and permanent injunctive relief and damages pursuant to the Lanham Act (15 U.S.C. § 1114 and 15 U.S.C. §1125 *et. seq.*); the Illinois Deceptive Trade Practices Act (815 ILCS 510/1 *et. seq.*); the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et. seq.*); and, for trademark infringement and unfair competition pursuant to Illinois common law. This action also seeks a declaratory judgment pursuant to the Declaratory Judgment Act (28 U.S.C. § 2201).

JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051 et. seq., 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331.

This Court has jurisdiction over the claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. Plaintiff is informed, believes, and thereon alleges that Defendants have sufficient contact with this district generally and, in particular, with the events here alleged, including, but not limited to its business activities involving the advertising and sale of its goods and/or services over the Internet to the citizens of Illinois, so as to subject it to both personal jurisdiction this court and to make this Court a proper venue pursuant to 28 U.S.C. §1391.

THE PARTIES

5. Plaintiff, Perfect Brow Art Franchise, Inc. ("Plaintiff"), is an Illinois corporation with its principal place of business at 3223 Lake Ave., Suite 15C, Wilmette, Illinois 60091. Plaintiff provides eyebrow, facial, and body threading and related services within the United States and abroad. Plaintiff is the owner of several famous United States Patent and Trademark Office Trademark Registrations.

6. Marius Blake ("Blake") is an individual residing in Tennessee. Upon information and belief, Blake has full ownership interest in Just Threading (collectively "Defendants").

7. Blake was formerly employed by Plaintiff to manage various Plaintiff locations.

8. Just Threading does business in Tennessee with a principal place of business at 3421 Austin Peay Hwy, Memphis, Tennessee 38128. Just Threading also provides eyebrow, facial, and body threading and related services within the United States.

STATEMENT OF FACTS

Plaintiff's Trademarks and Trademark Rights

9. Plaintiff is the owner of the United States Trademark Registration Nos. 3931415 and 4240478 for the mark BROW ART 23 for use in connection with "facial and body threading, namely,

hair removal service in conjunction with the use of a thread from eyebrows, chin, upper and/or lower lip, forehead, arms, legs, back, and chest area" in International Class 44.

10. Plaintiff is the owner of the United States Trademark Registration No. 4373078 for the mark BROW ART for use in connection with "hair removal services in the nature of facial and body threading" in International Class 44. (Registration Nos. 3931415, 4240478 and 4373078 collectively referred to as "the Plaintiff's Registrations".) (Exhibit A)

11. Plaintiff has used the BROW ART 23 and BROW ART marks ("the Plaintiff's Marks") in the U.S. since at least as early as May of 2008 with regard to the above iterated services, and continues to use and promote the Plaintiff's Marks in connection with such services.

12. Plaintiff's registrations for the Marks are valid, subsisting, and in full force and effect, and constitute evidence of validity of the Marks and of Plaintiff's exclusive right to use the marks in connection with the services identified in the registration.

13. Plaintiff has spent a considerable amount of money, time, and energy in connection with the promotion of its services promoted and rendered under the Marks and as a result a significant amount of goodwill has attached to the marks.

14. The Marks are entitled to a broad scope of protection by virtue of Plaintiff's continuous, exclusive and widespread use of the Marks for nearly ten years.

15. As a result of longstanding and extensive use in commerce and wide recognition among the purchasing public, Plaintiff's Marks have become distinctive as an indication of the source of such branded goods and services.

16. Notwithstanding Plaintiff's rights in and to the Marks, upon information and belief, on August 31, 2016, Defendants began using #BrowArt23 in connection to eyebrow, facial, and body threading.

17. Upon information and belief, as a former manager of various Plaintiff locations, Defendants have been on notice of Plaintiff's exclusive rights in the Plaintiff's Marks and Plaintiff's Registrations at least since the year of 2015.

18. Defendants' improperly use the Plaintiff's Marks. This use is such as to create a likelihood of confusion regarding the source or origin of Defendants' services. This use falsely implies that the Defendants' services are rendered with Plaintiff's consent to and involvement therewith. This use also falsely implies approval, affiliation, and/or sponsorship between Plaintiff and Defendants where there is none.

19. The use of the Plaintiff's Marks by Defendants is diluting the famous and distinctive quality of those marks and impairing Plaintiff's ability to obtain contracts with third parties in the future.

20. Defendants knowingly, willfully, and intentionally infringed Plaintiff's Marks and the rights afforded by Plaintiff's Registrations.

21. On information and belief, Defendants have received profits from its infringing use of Plaintiff's Marks.

22. Plaintiff's BROW ART 23 and BROW ART marks are completely subsumed into the defendant's #BROWART23 mark.

23. Upon information and belief, Defendants knew of Plaintiff's Marks at the time or before it adopted its #BROWART23 mark.

24. Plaintiff's Registrations issued on March 15, 2011, November 13, 2012, and July 23, 2013, all of which dates are prior to Defendants' first use of #BROWART23.

25. Discovery or further investigation is likely to show evidentiary support that the Defendants are taking affirmative steps to increase that use dramatically in connection with goods and/or services related to hair removal in the nature of facial and body threading.

Plaintiff and Defendant Blake's Contractual Relationship

26. Upon information and belief, prior to November 2015, Plaintiff and defendant Blake had entered into a contract regarding the management of the Asheville, North Carolina and West Town, Tennessee Plaintiff locations.

27. On November 1, 2015, Plaintiff and defendant Blake entered into a Settlement Agreement and Mutual General Release, whereby Plaintiff reclaimed management of its Ashville, North Carolina and West Town, Tennessee locations. By the terms of that contract, defendant Blake was to pay Plaintiff an agreed sum of payment, plus interest and any late fees. (Exhibit B)

28. Plaintiff has performed its obligations under the November 1, 2015 contract.

29. Defendant Blake has failed to perform its obligations under the November 1, 2015 contract. Defendant Blake failed to pay its contracted sum of Fifty-Three Thousand Nine Hundred Thirty Dollars and 36/100 ($53,930.36), plus interest and any applicable late fees since November 1, 2015.

30. On November 23, 2015, in exchange for certain amount of money to be paid by defendant Blake to Plaintiff, Plaintiff and defendant Blake entered into a new contract whereby defendant Blake was to manage the following four Plaintiff locations in Tennessee: Oak Court, Southland, Old Hickory, and Wolfchase. (Exhibit C)

31. Plaintiff has performed its obligations under the November 23, 2015 contract.

32. Defendant Blake failed to pay the agreed upon sum of payment to Plaintiff in accord with the terms of the November 23, 2015 contract.

33. As of December 12, 2016, the outstanding balance owed by defendant Blake to Plaintiff amounted to One Hundred Thousand One Hundred Fourteen Dollars and 14/100 ($100,114.14).

34. Defendant Blake's failures to perform the terms of the November 1, 2015 contract constitutes a material breach of said contract.

35. Defendant Blake's failure to perform the terms of the November 23, 2015 contracts constitutes a material breach of said contract.

COUNT I: TRADEMARK INFRINGEMENT AND FALSE DESIGNATION OF ORIGIN

36. Plaintiff hereby realleges and reaffirms paragraphs 1 through 35 of this complaint, as if the same were herein set forth verbatim.

37. Upon information and belief, Defendants used, continue to use, and intend to continue to use Plaintiff's Marks without permission, and willfully, knowingly, and intentionally violate Plaintiff's rights under 15 U.S.C. §§ 1114 and 1125(a) by their unauthorized use of the Plaintiff's Marks in a such a way to falsely suggest to the consuming public that there exists an association or affiliation between Plaintiff's and Defendants' services and/or that Plaintiff has sponsored or endorsed Defendants' sale of services under Plaintiff's Marks.

38. Defendants' actions have caused Plaintiff to lose control over the reputation and goodwill associated with Plaintiff's Marks.

39. By reason of Defendants' acts as above alleged, Plaintiff has suffered and continues to suffer damage and injury to its business, reputation and goodwill, and will sustain serious loss of revenue and profits in an indeterminate amount.

40. Unless enjoined by this Court, Defendants will continue to do the acts complained of herein all to the immediate, irreparable harm of Plaintiff. Plaintiff has no adequate remedy at law.

COUNT II: UNFAIR COMPETITION AND DECEPTIVE TRADE PRACTICES

41. Plaintiff hereby realleges and reaffirms paragraphs 1 through 40 of this complaint, as if the same were herein set forth verbatim.

42. Upon information and belief, Defendants used, continue to use, and intend to continue to use Plaintiff's Marks without permission, and willfully, knowingly, and intentionally engage in unfair competition and deceptive trade practices under federal law (15 U.S.C. §§ 1114 and 1125(a)) by their unauthorized use of Plaintiff's Mark.

43. Defendants' actions have caused Plaintiff to lose control over the reputation and goodwill associated with Plaintiff's Marks.

44. By reason of Defendants' acts as above alleged, Plaintiff has suffered and continues to suffer damage and injury to its business, reputation and goodwill, and will sustain serious loss of revenue and profits in an indeterminate amount.

45. Unless enjoined by this Court, Defendants will continue to do the acts complained of herein all to the immediate, irreparable harm of Plaintiff. Plaintiff has no adequate remedy at law.

COUNT III: VIOLATION OF THE FEDERAL DILUTION STATUTE

46. Plaintiff hereby realleges and reaffirms paragraphs 1 through 45 of this complaint, as if the same were herein set forth verbatim.

47. Plaintiff is the exclusive owner of the BROW ART 23 and BROW ART federal trademark registrations in the United States.

48. Since the introduction of Plaintiff's BROW ART Mark in 2008, Plaintiff's Mark has achieved enormous and widespread public recognition and as a result has become famous for the goods/services covered in Plaintiff's Registrations.

49. The Plaintiff's BROW ART 23 and BROW ART marks are famous within the meaning of Section 43(c) of the Lanham Act (15 U.S.C. § 1125 (c)).

50. Defendants' commercial use of #BROWART23 is likely to dilute, actually dilutes, and will continue to dilute the famous and distinctive BROW ART 23 and BROW ART Marks by tarnishment and blurring.

51. By reason of Defendants' acts alleged above, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation, good will and ability to obtain contracts with third parties in the future, and will sustain serious loss to the distinctive quality of its famous Mark.

52. Unless Defendants are enjoined from their wrongful conduct, Plaintiff will continue to suffer irreparable injury and harm, for which Plaintiff has no adequate remedy at law.

COUNT IV: ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT

53. Plaintiff hereby realleges and reaffirms paragraphs 1 through 52 of this complaint, as if the same were herein set forth verbatim.

54. Upon information and belief, Defendants used, continue to use, and intend to continue to use Plaintiff's Marks without permission, and willfully, knowingly, and intentionally violate Plaintiff's rights by their unauthorized use of the Plaintiff's Marks in a such a way to falsely suggest to the consuming public that there exists an association or affiliation between Plaintiff and Defendants services and/or that Plaintiff has sponsored or endorsed Defendants' sale of services under Plaintiff's Marks.

55. Defendants' conduct, as alleged above, causes and is likely to cause consumer confusion as to, and misrepresents, the origin, quality, characteristics, and source of its products and Plaintiff's products/services.

56. As such, Defendants' conduct constitutes deceptive trade practices in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1, *et. seq.*

57. Upon information and belief, by its acts, Defendants made and will make substantial profits and gains to which it is not in law or equity entitled.

58. By reason of Defendants' acts as alleged above, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation, good will and ability to obtain contracts with third parties in the future, and will sustain serious loss to the distinctive quality of its famous mark.

59. Unless Defendants are enjoined from their wrongful conduct, Plaintiff will continue to suffer irreparable injury and harm, for which Plaintiff has no adequate remedy at law.

COUNT V: ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES

60. Plaintiff hereby realleges and reaffirms paragraphs 1 through 59 of this complaint, as if the same were herein set forth verbatim.

61. Upon information and belief, Defendants used, continue to use, and intend to continue to use Plaintiff's Marks without permission, and willfully, knowingly, and intentionally violate Plaintiff's rights by their unauthorized use of the Plaintiff's Marks in a such a way to falsely suggest to the consuming public that there exists an association or affiliation between Plaintiff and Defendants services and/or that Plaintiff has sponsored or endorsed Defendants' sale of services under Plaintiff's Marks.

62. Defendants' conduct, as alleged above, causes and is likely to cause consumer confusion as to, and misrepresents, the origin, quality, characteristics, and source of its products and/or services of Plaintiff.

63. As such, defendant's conduct constitutes deceptive trade practices in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et. seq.*

64. Upon information and belief, by its acts, defendant has made and will make substantial profits and gains to which it is not in law or equity entitled.

65. By reason of Defendants' acts as alleged above, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation, good will and ability to obtain contracts with third parties in the future, and will sustain serious loss to the distinctive quality of its famous mark.

66. Unless Defendants are enjoined from their wrongful conduct, Plaintiff will continue to suffer irreparable injury and harm, for which Plaintiff has no adequate remedy at law.

COUNT VI: COMMON LAW TRADEMARK INFRINGEMENT

67. Plaintiff hereby realleges and reaffirms paragraphs 1 through 66 of this complaint, as if the same were herein set forth verbatim.

68. Upon information and belief, Defendants used, continue to use, and intend to continue to use Plaintiff's Marks without permission, and willfully, knowingly, and intentionally violate Plaintiff's rights by their unauthorized use of the Plaintiff's Marks in a such a way to falsely suggest to the consuming public that there exists an association or affiliation between Plaintiff and Defendants services and/or that Plaintiff has sponsored or endorsed Defendants' sale of services under Plaintiff's Marks.

69. Defendants' conduct, as alleged above, causes and is likely to cause consumer confusion as to, and misrepresents, the origin, quality, characteristics, and source of its products and/or services of Plaintiff.

70. As such, defendant's conduct constitutes unfair competition and trademark infringement in violation of the common law of Illinois.

71. Upon information and belief, by its acts, defendant has made and will make substantial profits and gains to which it is not in law or equity entitled.

72. By reason of Defendants' acts as alleged above, Plaintiff has suffered and will continue to suffer damage and injury to its business, reputation, good will and ability to obtain contracts with third parties in the future, and will sustain serious loss to the distinctive quality of its famous mark.

73. Unless defendant is enjoined from their wrongful conduct, Plaintiff will continue to suffer irreparable injury and harm, for which Plaintiff has no adequate remedy at law.

COUNT VII: BREACH OF CONTRACTS

74. Plaintiff hereby realleges and reaffirms paragraphs 1 through 73 of this complaint, as if the same were herein set forth verbatim.

75. Although Plaintiff met its obligations under the November 1, 2015 and November 23, 2015 contracts, Defendant Blake failed to meet its obligations.

76. Defendant Blake's failure to meet its obligations under either the November 1, 2015 or November 23, 2015 contracts constitutes a material breach of said contracts to which Plaintiff should be made whole.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Perfect Brow Art Franchise, Inc., respectfully requests that the Court:

A. Find that the Defendants have violated Section 32 of the Lanham Act (15 U.S.C. §1114); Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)); and Section 43(c) of the Lanham Act (15 U.S.C. § 1125(c)); (ii) defendant has engaged in deceptive acts and practices under Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/1 *et. seq.*); (iii) defendant has violated the Illinois Consumer Fraud and Deceptive Business Practices Act, (815 ILCS 505/1 *et. seq.*); and (iv) defendant has engaged in trademark infringement and unfair competition under the common law of Illinois;

B. Grant an injunction permanently enjoining and restraining the defendant, its agents, servants, employees, successors and assigns, and all those acting in concert or participation with it, from:

a. Manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting, using or displaying hair removal services in the nature of facial and body threading or any other product or services using any marks confusingly similar to Plaintiff's BROW ART 23 and BROW ART trademarks, including but not limited to the #BROWART23 designations; and

b. making any statement or representation whatsoever, or using any false or misleading descriptions or representations of fact in connection with the manufacture, production, distribution, circulation, sale, offering for sale, advertising, promotion, use or display of hair removal services in the nature of facial and body threading or any other product or services using any marks confusingly similar to Plaintiff's BROW ART 23 and BROW ART trademarks, including but not limited to the #BROWART23 designations; and

c. engaging in any other activity constituting infringement of Plaintiff's BROW ART 23 and BROW ART trademarks, or unfair competition with Plaintiff.

C. Direct that defendant, at its own expense, recall all of its product and marketing, promotional, and advertising material, which bears or incorporates the #BROWART23 designations, or any designations confusingly similar to Plaintiff's BROW ART 23 and BROW ART trademarks.

D. Require defendant to deliver to Plaintiff's attorneys or representatives for destruction or other disposition all remaining products, labels, signs, prints, and advertisements in its possession or under its control bearing the #BROWART23 designations, or any designations confusingly similar to Plaintiff's BROW ART 23 and BROW ART trademarks;

E. Direct that defendant file with the Court and serve on the Plaintiff's counsel a report in writing and under oath setting forth in detail the manner in which it has complied with any temporary restraining order, or preliminary or permanent injunction entered herein within thirty (30) days of receipt of service of any such order or injunction;

F. Order an accounting of Defendants' profits and award Plaintiff its actual and/or statutory damages including increased damages for willful violation of rights.

G. Direct that defendant account to and pay over to Plaintiff all profits realized by its wrongful acts in violation of breach of contracts, 15 U.S.C. § 1125, 815 ILCS 510/1 *et. seq.*, 815 ILCS 505/1 *et. seq.*, and other applicable laws.

H. Direct that such profits be trebled in accordance with Section 35 of the Lanham Act (15 U.S.C. § 1117) for the willful and wanton nature of Defendants' acts.

I. At its election, award Plaintiff statutory damages in accordance with Section 35 of the Lanham Act (15 U.S.C. § 1117).

J. Award Plaintiffs its costs and attorney's fees and investigatory fees and expenses to the full extent provided for by Section 35 of the Lanham Act (15 U.S.C. § 1117).

K. Direct such other relief as the Court may deem appropriate to prevent the public from being misled or deceived.

L. Find that the Defendants have breached its contract with the Plaintiff and as such, award general compensatory damages, statutory damages, punitive damages, and attorney's fees and costs in this action to the Plaintiff as a matter of law.

M. Grant to Plaintiff such other and further relief as may be just and appropriate.

JURY DEMAND

Plaintiff, Perfect Brow Art Franchise, Inc., demands a trial by jury of all issues triable to a jury in the above action.

Respectfully submitted,

PERFECT BROW ART FRANCHISE, INC.

Date: May 12, 2017

By: /s/ Michele S. Katz
One of its attorneys

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CERTIFICATE OF FILING

I, the undersigned attorney, certify that I electronically filed the foregoing COMPLAINT with the Clerk of the Court using the CM/ECF system on May 12, 2017.

/s/ Michele S. Katz
Michele S. Katz
Attorney for Plaintiff